



NEW JERSEY MILITIA NEWSLETTER



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All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, protecting property, and of pursuing and obtaining safety and happiness.

—Article I, Section 1, New Jersey State Constitution

We, the free-born people of New Jersey, exercising our unalienable rights, do hereby proclaim that the New Jersey Militia has been formed from the unorganized militia.

It is imperative to realize that freedom is not free nor is it fought for once and assumed to be secured. Liberty does not descend onto the people, it is required of the people to elevate themselves to liberty. Once again, the clock of time has come full circle to where our freedoms are in danger and total government is ticking its way in. Our Republic is now moribund due to legislation that abrogates justice. Legislation such as and not limited to the Crime Bill, Brady Bill and H.R. 666 that overrides the 4th Amendment. To add insult upon all Americans, nearly all Ten Planks of *The Communist Manifesto* (see page 2) have been incorporated into our system, and peaceable Americans are considered fair game at places like Ruby Ridge and Waco.

It is not only our duty, it is our moral obligation to defend and restore, through American law, our form of government. It is you, the individual New Jerseyman, who make up the Militia. And it is you which the spirit of liberty is depending upon.

OUR GOALS ARE TO EDUCATE PEOPLE IN

- Our Declaration of Independence
- Our Constitution
- Our Bill of Rights

ALSO, WE SEEK TO

- Dismantle all legislation which is repugnant to our constitutional Republic.
- Be ready as a last resort to come to our nation's defense against all enemies, foreign or domestic.

THE MILITIA

The classes of the militia are:

(a) The organized militia, which consists of the National Guard, the Naval Militia and the State Guard; and

(b) The unorganized militia who are not members of the organized militia. (NJSA, 38A:1-3)

The Militia is the whole people. The National Guard, on the other hand, is a select militia that is equipped, trained and paid by the Federal Government. It has been totally integrated into the armed forces and is now serving overseas in such places as the Golan Heights.

The New Jersey Militia is part of the unorganized militia; we cannot accept Federal arms, training or pay. To do so would compromise our independence and negate our role as a check against tyranny. The New Jersey Militia is the people themselves; we are your neighbors and relatives and will never be used as was the National Guard that killed four unarmed students at Kent State.

"I ask, sir, what is the militia? It is the whole people, except for a few public officials."--George Mason, 3 Elliott, Debates at 425-426

"A militia, when properly formed, are in fact the people themselves...and include all men capable of bearing arms."--Richard Henry Lee, *Additional Letters from the Federal Farmer* (1788) at 169

[Please note: The New Jersey Militia welcomes women. Margaret Corbin is held in high regard as a member of the militia who commanded her dead husband's cannon at the battle of Fort Mifflin in 1776.]

"What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty."--Rep. Elbridge Gerry of Massachusetts, *1 Annals of Congress* at 750 (August 17, 1789)

"There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia that one is at a loss whether to treat it with gravity or with railery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instill prejudices at any price; or as the serious offspring of political fanaticism. Where in the name of common sense are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits, and interests?"--Alexander Hamilton, *The Federalist Papers*, No. 29

OUR RIGHT OF SELF-DEFENSE

The New Jersey Militia is an extension of the people's God-given rights to life, liberty and property. A corollary of those rights is the right to self-defense, which is necessary to retain them.

We utterly condemn the bombing in Oklahoma City, not only as a criminal act, but as an act of offensive aggression. The New Jersey Militia will never take the offensive. Hopefully, our mere existence will be sufficient to check the ambitions of despots.

"Arms in the hands of citizens [may] be used at individual discretion...in private self-defense..."--John Adams, *A Defense of the Constitutions of the Government of the USA*, at 471 (1788)

"The supposed quietude of a good man allures the ruffian; while on the other hand, arms like laws discourage and keep the invader and the plunderer in awe, and preserve order in the world as well as property. The same balance would be preserved were all the world destitute of arms, for all would be alike; but since some will not, others dare not lay them aside...Horrid mischief would ensue were one half the world deprived of the use of them..."--Thomas Paine, *Writings of Thomas Paine* at 56 (1894)

"If the representatives of the people betray their constituents, there is then no recourse left but in the exertion of that original right of self-defense which is paramount to all positive forms of government."--Alexander Hamilton, *The Federalist Papers*, No. 28

KNOW YOUR BILL OF RIGHTS

The Bill of Rights, our first Ten Amendments to the U.S. Constitution, are limitations on arbitrary Federal power over both the individual and the several states of the Union. It has been severely eroded over the past decades, especially since the advent of the war on drugs. We include it as a reminder of what we have lost and what we must work to restore.

Article I--Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II--A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Article III--No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV--The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V--No person shall be held to answer for a capital, or otherwise infamous

crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI--In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of Counsel for his defense.

Article VII--In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII--Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX--The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X--The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people.

THE TEN PLANKS OF THE COMMUNIST MANIFESTO

Communism has been a dismal failure. Millions have died as a direct result of the application of its principles by social engineers. Yet many of its tenets have been imposed on us, to our great detriment. We seek to rid ourselves of its harmful effects.

1. Abolition of private property. (Our Federal government owns 33.5% of the land;

the rest is controlled through regulation and taxation.)

2. Progressive, graduated income tax. (Enacted 1913.)

3. Abolition of rights of inheritance. (Inheritance tax enacted 1916.)

4. Confiscation of property of emigrants and rebels. (Government report required before taking more than \$5,000 from the country; civil asset forfeiture laws; RICO laws.)

5. Centralization of credit by means of a national bank. (Federal Reserve system created 1913.)

6. Government control of communications and transport (FTC, 1916; FCC, 1934.)

7. Government ownership of the means of production and improvement of the land in accordance with a common plan. (Government regulation; land use master plans.)

8. Equal liability to labor. (Government is becoming the employer; national service program.)

9. Forced redistribution of the population. (Urban renewal, Tennessee Valley Authority, etc.)

10. Free education of all children in public schools. (Denial of parental choice in education.)

THE UNITED NATIONS & THE NEW WORLD ORDER

The New Jersey Militia cannot support the UN's goal to establish itself as the world government under the New World Order. Rather than grant our Constitution to the other nations, the UN intends, eventually, to do away with it. The Charter of the United Nations includes no Bill of Rights. Its desire to "employ international machinery for the promotion of the economic and social advancement of all peoples" is nothing more than a veiled reference to the intended massive redistribution of the wealth of New Jerseyans to Third World governments and the world government itself.

We, therefore, oppose the presence of UN troops and personnel, including US forces on UN assignment, at McGuire Air Force Base, Fort Dix or elsewhere on our soil. We intend to inform the U.S. armed forces that are under UN command that they are violating their sworn oath to defend the Constitution.

"To achieve world government, it is necessary to remove from the minds of men their individualism, loyalty to family traditions, national patriotism and religious dogmas."--Brock Adams, Director UN Health Organization

"Educate and inform the whole mass of the people. Enable them to see that it is their interest to preserve peace and order, and they will preserve them."

--Thomas Jefferson

UNCONSTITUTIONAL LAWS

The courts have forgotten the Constitution. Instead they have invented one of their own by, for example, extending the interstate commerce clause to control vast areas of American life. They also follow case law and *stare decisis*; that is, if they make a bad decision, they "let it stand" and use it as a precedent for further bad decisions. The legislature, too, has abdicated its role by granting power to regulators to implement the law. As a result, unconstitutional and administrative laws have strangled American liberty. The New Jersey Militia thus seeks to remove all such unlawful restraints.

"All laws which are repugnant to the Constitution are null and void."--Marbury vs. Madison, 5 US 137 (1803)

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."--Miranda vs. Arizona, 384 US 436

If the real trial by jury had been preserved in the courts of the United States -- that is, if we had had legal juries, and the jurors had known their rights -- it is hardly probable that one tenth of the past legislation of Congress would ever have been enacted, or, at least, that, if enacted, it could have been enforced.

--Lysander Spooner

The people are the masters of both Congress and the courts, not to overthrow the Constitution, but to overthrow the men who pervert it!

--Abraham Lincoln

SLAVES OR FREE MEN

In the Bill of Rights, under the 4th Amendment, it states in part, "The right of the people to be secure in their persons, houses, papers, and effects shall not be violated." This amendment clearly demonstrates to the government that the people are the sovereign. It also establishes the fact that privacy is one of the key foundation blocks of liberty. Without privacy, it is impossible for freedom to ring.

Since we are to be secure in our effects from government intrusion--how then is it possible for the government at any level to decide what we can and cannot own. Who gives anyone, including governments, the right to steal another human being's property?

Today, we are witnessing the erosion of our Second Amendment which is the right of each and every one of us to bear (own) arms. Without weapons, we the people could not effectively and lawfully organize a meaningful militia.

Let us make no mistake about it; the intent of the 2nd Amendment is to make sure the people have the means of protecting themselves from their own government should it become tyrannical. It is obvious that it has become exactly that. With the murdering spree by this government from Ruby Creek, Idaho to Waco, Texas, it is necessary for the people to hold on to their right to bear arms. Let us put to rest the notion that this is a sportsmen's issue vs. the state, it is not! Let us also put to rest the concept of the National Guard being the only militia. If it were, what defense would we the people have from our own government. This major push to outlaw weapons from the good people of this country, in the name of crime prevention, is absurd. For an example, if the Government is truly concerned about human life, it would remain neutral in foreign affairs and not use the lives of our young men for world police. Also, this government would not deny the individual the fruits of his labor through a tyrannical tax system.

Furthermore, if this government is truly concerned about the welfare of its people, it would encourage the people to own firearms to protect themselves from the criminal element in society. What is the real reason behind this massive drive to disarm the people? Common sense should tell us it will not stop crime. History dictates that every government that wanted to disarm the people planned to disempower the people, and cannot be trusted. Our government is no exception!

Remember, a free man will always bear arms.

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LAW OF THE LAND

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid. One must prevail. This is succinctly stated as follows:

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose. Since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Because an unconstitutional law is void, the general principle follows that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it...

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

--16 American Jurisprudence 2d, Section 256

Therefore, the New Jersey Militia maintains the position that the National Firearms Act of 1934, the Gun Control Act of 1968, and the Brady Law are null and void.

ORIGIN OF CITIZENS MILITIA

The best reason for maintaining an unorganized militia would be an immediate reduction in defense spending. Other benefits would include: reduction in crime rates, less burden to police agencies, and most importantly bring back a common responsibility to all people. Our main responsibility is to provide a safe and stable future for the children, and generations to follow.

Creating a government monopoly on small arms is a threat...that no free citizens were ever expected to endure by the people who created the United States. Many were serfs or slaves who came to America dreaming of freedom. In the lands from which they came only freemen and landowners could bear arms. It was their goal in classifying arms ownership as a God given right that no future generation would suffer the way they had...to anyone or government.

There was never supposed to be a national standing army of any sort in our nation; they were regarded as a bane to liberty. Standing armies, and those who rule them, have abused people throughout recorded history, and will again if allowed to do so. The Militia Act of 1792 required every free male citizen of fighting age to own the same type of military rifle which was used by the continental army. This fact proves that military style weapons that are

under attack today are protected by what's left of the U.S. Constitution, and implies that the right to bear arms was not intended to protect arms for hunting or sporting uses.

Not allowing people arms ownership by costly registration, taxation, tort laws and eventual confiscation is a crime against humanity and freepeople. These methods have been used before in other nations and ultimately led to abuse of citizens...Cuba, Russia, pre-war (Nazi) Germany are a few of the many examples of abuse of this power. Not supporting or advocating ownership and training of citizens in safe, responsible use of arms is ignorance which would have grave consequences to future Americans.

THE CRIME THAT NEVER WAS

Printed below is the heartbreaking anti-gun story that President Bill Clinton has told to audiences nationwide.

"Don't let anybody tell you that this (gun control plan) won't work. I've got a friend back home who sold a gun years ago to a guy who had escaped from a mental hospital that he hadn't seen in ten years, and he pulled out that old form from the 1968 act and said, 'Have you ever been convicted of a crime, have you ever been in a mental hospital?' The guy said, 'No, no,' and he put the form back in the drawer, and 12 hours later six people were dead and my friend is not over it to this day Don't tell me this bill will not make a difference. That is not true. That is not true."

During his campaign, and while he was promoting his unconstitutional plan for the national registration of all handguns and the licensing of all handgun owners, Clinton retold

this story over and over again. This story left many audiences on the verge of tears. Many left saying that this alone is reason enough to pass more anti-gun laws.

However, it is nothing but a BIG LIE!

The Arkansas Democrat-Gazette made a thorough search of back newspaper files and could not find any case of an escaped mental patient killing anyone in Arkansas. Col. T. L. Goodwin, director for the state police in Arkansas, says there were two mass killings back in the 1970's but that both the killers were women. Neither of these women had ever been in a mental institution much less escaped from one.

Reporters from the *New York Daily News* have questioned White House aides about this fantastic tale. They found that Clinton does not want to name his friend--ostensibly, so as not to cause the friend any notoriety. White House spokesmen now say that Clinton refuses to discuss the story. Nor will he divulge any further details about the case.

The truth is that the entire story is one BIG LIE from beginning to end. What we are enduring here is a lying, deceitful, immoral, decadent and totally unqualified person sitting as president.

AMERICA'S GOODNESS

The Ten Commandments are the spiritual base on which our country is founded. However, God works in mysterious ways. He used an atheist, Thomas Paine, to spread the gospel of liberty prior to and during the Revolution.

The New Jersey Militia, therefore, invites men and women, regardless of race, color or religious beliefs, interested in standing together for freedom, to join us.

"IN THE BEGINNING OF CHANGE, THE PATRIOT IS A SCARCE MAN; BRAVE, HATED AND SCORNE. WHEN HIS CAUSE SUCCEEDS, HOWEVER, THE TIMID JOIN HIM, FOR THEN IT COSTS NOTHING TO BE A PATRIOT."

—MARK TWAIN

The New Jersey Militia needs your support!! We plan to follow Thomas Jefferson's ideal to "educate and inform the whole mass of the people..."

We want to hear from you! Send your comments, suggestions, personal stories and donations to address below:

N J M

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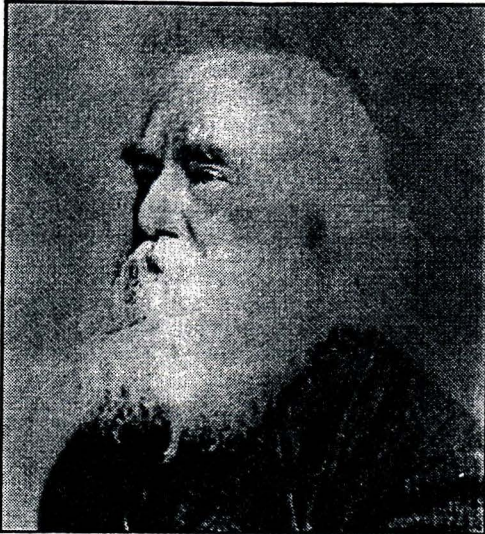
TRIAL BY JURY

By Lysander Spooner

THE RIGHT OF JURIES TO JUDGE OF THE JUSTICE OF LAWS

Section 1

For more than six hundred years--that is, since Magna Carta, in 1215--there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; *but that it is also their right, and their primary and paramount duty, to judge the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.*



It was anciently called "trial *per pais*"--that is, "trial by the country." And now, in every criminal trial, the jury are told that the accused "has, for trial, put himself upon the country; which *country* you (the jury) are."

The object of this trial "by the country," or by the people, in preference to a trial by the government, is to guard against every species of oppression by the government. In order to effect this end, it is indispensable that the people, or "the country," judge and determine their own liberties against the government; instead of the government's judging of and determining its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government, if they are not allowed to determine what those liberties are?

Any government, that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course. It has all the powers that it chooses to exercise. There is no other (or at least no accurate) definition of despotism than this.

On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. *And this is freedom.* At least, it is freedom *to them*; because, although it may be theoretically imperfect, it, nevertheless, corresponds to *their* highest notions of freedom.

To secure this right of the people to judge of their own liberties against the government, the jurors are taken, (or must be, to make them lawful jurors) from the body of the people, *by lot*, or by some process that precludes any previous knowledge, choice, or selection of them, on the part of the government.

This is done to prevent the government's constituting a jury of its own partisans or friends; in other words, to prevent the government's *packing* a jury, with a view to maintain its own laws, and accomplish its own purposes.

It is supposed that, if twelve men be taken, *by lot*, from the mass of the people, without the

possibility of any previous knowledge, choice, or selection of them, on the part of the government, the jury will be a fair epitome of "the country" at large, and not merely of the party or faction that sustain the measures of the government; that substantially all classes of opinions, prevailing among the people, will be represented in the jury; and especially that the opponents of the government, (if the government have any opponents,) will be represented there, as well as its friends; that the classes, who are oppressed by laws of the government, (if any are thus oppressed,) will have their representatives in the jury, as well as those classes, who take sides with the oppressor--that is, with the government.

It is fairly presumable that such a tribunal will agree to no conviction except such as *substantially the whole country* would agree to, if they were present, taking part in the trial. A trial by such a tribunal is, therefore, in effect, "a trial by the country." In its results it probably comes as near to a trial by the whole country, as any trial that it is practicable to have, without too great inconvenience and expense. And as unanimity is required for a conviction, it follows that no one can be convicted except for the violation of such laws as substantially the whole country wish to have maintained. The government can enforce none of its laws, (by punishing offenders, through the verdicts of juries,) except such as substantially the whole people wish to have enforced. The government, therefore, consistently with the trial by jury, can exercise no powers over the people, (or, what is the same thing, over the accused person, who represents the rights of the people,) except such as substantially the whole people of the country consent that it may exercise. In such a trial, therefore, "the country," or the people, judge of and determine their own liberties against the government, instead of the government's judging of and determining its own powers over the people.

But all this "trial by the country" would be no trial at all "by the country," but only a trial by the government, if the government could either declare who may, and who may not, be jurors, or could dictate to the jury anything whatever, either of law or of evidence, that is of the essence of the trial.

Unless such be the right and duty of jurors, it is plain that, instead of juries being a "palladium of liberty"--a barrier against the tyranny and oppression of the government--they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

But for their right to judge the law, *and the justice of the law*, juries would be no protection to an accused person, *even as to matters of fact*; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible, and what inadmissible, *and also what force or weight is to be given to the evidence admitted.* And if the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleased to offer them.

That the rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object.

"The trial by jury," then, is a "trial by the country"--that is, by the people--as distinguished from a trial by the government.

If the government may decide who may, and who may not, be jurors, it will of course select only its partisans, and those friendly to its measures. It may not only prescribe who may, and who may not, be eligible to be drawn as jurors; but it may also question each person drawn as a juror, as to his sentiments in regard to the particular law involved in each trial, before suffering him to be sworn on the panel; and exclude him if he be found unfavorable to the maintenance of such a law.

So, also, if the government may dictate to the jury what laws they are to enforce, it is no longer a "trial by the country," but a trial by the government; because the jury then try the accused, not by any standard of their own—not by their own judgments of their rightful liberties—but by a standard dictated to them by the government. And the standard, thus dictated by the government, becomes the measure of the people's liberties. If the government dictate the standard of trial, it of course dictates the results of the trial. And such a trial is not trial by the country, but only a trial by the government; and in it the government determines what are its own powers over the people, instead of the people's determining what are their own liberties against the government. In short, if the jury have no right to judge of the justice of the law of the government, they plainly can do nothing to protect the people against the oppressions of the government; for there are no oppressions which the government may not authorize by law.

The jury are also to judge whether the laws are rightly expounded to them by the court. Unless they judge on this point, they do nothing to protect their liberties against the oppressions that are capable of being practiced under cover of a corrupt exposition of the laws. If the judiciary can authoritatively dictate to a jury any exposition of the law, they can dictate to them the law itself, and such laws as they please; because laws are, in practice, one thing or another, according as they are expounded.

The jury must also judge whether there really be any such law, (be it good or bad,) as the accused is charged with having transgressed. Unless they judge on this point, the people are liable to have their liberties taken from them by brute force, without any law at all.

The jury must also judge of the laws of evidence. If the government can dictate to the jury the laws of evidence, it can not only shut out any evidence it pleases, tending to vindicate the accused, but it can require that any evidence whatever, that it pleases to offer, be held as conclusive proof of any offense whatever which the government chooses to allege.

It is manifest, therefore, that the jury must judge of and try the whole case, and every part and parcel of the case, free of any dictation or authority on the part of the government. They must judge of the existence of the law; of the true exposition of the law; of the justice of the law; and of the admissibility of and weight of all the evidence offered; otherwise the government will have everything its own way; the jury will be mere puppets in the hands of the government; and the trial will be, in reality, a trial by the government, and not a "trial by the country." By such trials the government will determine its own powers over the people, instead of the people's determining their own liberties against the government; and it will be an entire delusion to talk, as for centuries we have done, of the trial by the jury, as a "palladium of liberty," or as any protection to the people against the oppression and tyranny of the government.

The question, then, between trial by jury, as thus described, and trial by the government, is simply a question between liberty and despotism. The authority to judge what are the powers of the government, and what are the liberties of the people, must necessarily be vested in one or the other of the parties themselves—the government, or the people; because there is no third party to whom it can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with. If, on the other hand, that authority be vested in the people, then the people have all liberties, (as against the government,) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no power except such as substantially the whole people (through a jury) consent that it may exercise.

SECTION 2

The force and justice of the preceding argument cannot be evaded by saying that the government is chosen by the people; that, in theory, it represents the people; that it is designed to do the will of the people; that its members are all sworn to observe the fundamental or constitutional law instituted by the people; that its acts are therefore entitled to be considered the acts of the people; and that to allow a jury, representing the people, to invalidate the acts of government, would therefore be arraying the people against themselves.

There are two answers to such an argument.

One answer is, that, in a representative government, there is no absurdity or

contradiction, nor any arraying of the people against themselves, in requiring that the statutes or enactments of the government shall pass the ordeal of any number of separate tribunals, before it shall be determined that they are to have the force of laws. Our American constitutions have provided five of these separate tribunals, to wit, representatives, senate, executive, jury, and judges; and have made it necessary that each enactment shall pass the ordeal of all these separate tribunals, before its authority can be established by the punishment of those who choose to transgress it. And there is no more absurdity or inconsistency in making a jury one of these several tribunals, than there is in making the representatives, or the senate, or the executive, or the judges, one of them. There is no more absurdity in giving a jury the veto upon the laws, than there is in giving a veto to each of these other tribunals. The people are no more arrayed against themselves, when a jury puts it veto upon a statute, which the other tribunals have sanctioned, than they are when the same veto is exercised by the representatives, the senate, the executive, or the judges.

But another answer to the argument that the people are arrayed against themselves, when a jury hold an enactment of the government invalid, is, that the government, and all the departments of government, are *merely the servants and agents of the people*; not interested with arbitrary or absolute authority to bind the people, but required to submit all their enactments to the judgement of a tribunal more fairly representing the whole people, before they carry them into execution, by punishing any individual for transgressing them. If the government were not thus required to submit their enactments to the judgment of "the country," before executing them upon individuals—if, in other words, the people had reserved to themselves no veto upon the acts of government, the government, instead of being a mere servant and agent of the people, would be an absolute despot over the people. It would have all power in its own hands; because the power to *punish* carries all other powers with it. A power that can, of itself, and by its own authority, punish disobedience, can compel obedience and submission, and is above all responsibility for the character of its laws. In short, it is a despotism.

And it is of no consequence to inquire how a government came by this power to punish, whether by prescription, by inheritance, by usurpation, or by delegation of the people? *If it have now but got it*, the government is absolute.

It is plain, therefore, that if the people have invested the government with power to make laws that absolutely bind the people, and to punish the people for transgressing those laws,

the people have surrendered their liberties unreservedly into the hands of the government.

It is of no avail to say, in answer to this view of the case, that in surrendering their liberties into the hands of government, the people took an oath from the government, that it would exercise its power within certain constitutional limits; for when did oaths ever restrain a government that was otherwise unrestrained? Or when did a government fail to determine that all its acts were within the constitutional and authorized limits of its power, if it were permitted to determine that question for itself?

Neither is it of any avail to say, that if the government abuses its power, and enact unjust and oppressive laws, the government may be changed by the influence of discussion, and the exercise of the right of suffrage (voting). Discussion can do nothing to prevent the enactment, or procure the repeal, of unjust laws, unless it be understood that the discussion is to be followed by resistance. Tyrants care nothing for discussions that are to end only in discussion. Discussions, which do not interfere with the enforcement of their laws, are but idle wind to them. Suffrage is equally powerless and unreliable. It can be exercised only periodically; and the tyranny must at least be borne until the time for suffrage comes. Besides, when the suffrage is exercised, it gives no guarantee for the repeal of existing laws that are oppressive, and no security against the enactments of new ones that are equally so. The second body of legislators are liable and likely to be just as tyrannical as the first. If it be said that the second body may be chosen for their integrity, the answer is, that the first were chosen for that very reason, **and yet proved tyrants**. The second will be exposed to the same temptations as the first, and will be just as likely to prove tyrannical. Who ever heard that succeeding legislatures were, on the whole, more honest than those that preceded them? What is there in the nature of men or things to make them so? If it be said that the first body were chosen from motives of injustice, that fact proves that there is a portion of society who desire to establish injustice; and if they were powerful or artful enough to procure the election of their instruments to compose the first legislature, they will be likely to be powerful or artful enough to procure the election of the same or similar instruments to compose the second. The right of suffrage, therefore, and even a change of legislators, guarantees no change of legislation—certainly no change for the better. Even if a change for the better actually comes, it comes too late, because it comes only after more or less injustice has been irreparably done.

But, at best, the right of suffrage can be exercised only periodically; and between the

periods the legislators are wholly irresponsible. No despot was ever more entirely irresponsible than are republican legislators during the period for which they are chosen. They can never be removed from their office, nor called to account while in their office, nor punished after they leave office, be their tyranny what it may. Moreover, the judicial and executive departments of the government are equally irresponsible *to the people*, and are only responsible, (by impeachment, and dependence for their salaries), to these irresponsible legislators. This dependence of the judiciary and executive upon the legislature is a **guaranty that they will always sanction and execute its laws, whether just or unjust**. Thus the legislators hold the whole power of the government in their hands, and are at the same time utterly irresponsible for the manner in which they use it.

If, now, this government, (the three branches thus really united in one), can determine the validity of, and enforce, its own laws, it is, for the time being, entirely absolute, and wholly irresponsible to the people.

But this is not all. These legislators, and this government, so irresponsible while in power, can perpetuate their power at pleasure, if they can determine what legislation is authoritative upon the people, and can enforce obedience to it; for they can not only declare their power perpetual, but they can enforce submission to all legislation that is necessary to secure its perpetuity. They can, for example, prohibit all discussion of the rightfulness of their authority; forbid the use of suffrage; prevent the election of any successors; disarm, plunder, imprison, and even kill all who refuse submission. If, therefore, the government (all departments united) be absolute for a day—that is, if it can, for a day, enforce obedience to its own laws—it can, in that day, secure its power for all time—like the queen, who wished to reign but for a day, but in that day caused the king, her husband, to be slain, and usurped his throne.

Nor will it avail to say that such acts would be unconstitutional, and that unconstitutional acts may be lawfully resisted; for everything a government pleases to do will, of course, be determined to be constitutional, if the government itself be permitted to determine the question of the constitutionality of its own acts. **Those who are capable of tyranny, are capable of perjury to sustain it.**

The conclusion, therefore, is, that any government, that can, *for a day*, enforce its own laws, without appealing to the people, (or to a tribunal fairly representing the people,) for their consent, is, in theory, an absolute

government, irresponsible to the people, and can perpetuate its power at pleasure.

The trial by jury is based upon a recognition of this principle, and therefore forbids the government to execute any of its laws, by punishing violators, in any case whatever, without first getting the consent of "the country" or at the people, through a jury. In this way, the people at all times, hold their liberties in their own hands, and never surrender them, even for a moment, into the hands of government.

The trial by jury, then gives to any and every individual the liberty, at any time, to disregard or resist any law whatever of the government, if he be willing to submit to the decision of a jury, the questions, whether the law be intrinsically just and obligatory, and whether his conduct, in disregarding or resisting it, were right in itself? And any law which does not, in such trial, obtain the unanimous sanction of twelve men, taken at random from the people, and judging according to the standard of justice in their own minds, free from all dictation and authority of the government, may be transgressed and resisted with impunity, by whomsoever pleases to transgress or resist it.

The trial by jury authorizes all this, or it is a sham and a hoax, utterly worthless for protecting the people against oppression. If it does not authorize an individual to resist the first and least act of injustice or tyranny, on the part of the government, it does not authorize him to resist the last and the greatest. If it do not authorize individuals to nip tyranny in the bud, it does not authorize them to cut it down when its branches are filled with the ripe fruits of plunder and oppression.

Those who deny the right of a jury to protect an individual in resisting an unjust law of the government, deny him all *legal* defense whatsoever against oppression. The right of revolution, which tyrants, in mockery, accord to mankind, is no *legal* right *under* a government; it is only a *natural* right to overturn a government. **The government itself never acknowledges this right.** And the right is practically established only when and because the government no longer exists to call it in question. The right, therefore, can be exercised with immunity, only when it is exercised victoriously. All *unsuccessful* attempts at revolution, however justifiable in themselves, are punished as treason, if the government be permitted to judge of the treason. **The government itself never admits the injustice of its laws**, as a legal defense for those who have attempted a revolution, and failed. The right of revolution, therefore, is a right of no practical value, except for those who are stronger than the government. So long, therefore, as a oppressions of a government are

kept within such limits as simply not to exasperate against it a power greater than its own, the right of revolution cannot be appealed to, and is therefore inapplicable to the case. This affords a side field for tyranny; and if a jury cannot *here* intervene, the oppressed are utterly defenseless.

It is manifest that the only security against the tyranny of the government lies in forcible resistance to the execution of the injustice; because the injustice will certainly be executed, *unless* it be *forcibly resisted*. And if it be but suffered to be executed, it must then be borne; for the government never makes compensation for its own wrongs.

Since, then, this forcible resistance to the injustice of the government is the only possible means of preserving liberty, it is indispensable to all *legal* liberty that this *resistance* should be *legalized*. It is perfectly self-evident that where there is no *legal* right to resist the oppression of the government, there can be no *legal* liberty. And here it is all-important to notice, that, *practically speaking*, there can be no *legal* right to resist the oppressions of the government, unless there be some *legal* tribunal, other than the government, and wholly independent of, and *above*, the government, to judge between the government and those who resist its oppressions; in other words, to judge what laws of the government are to be obeyed, and what may be resisted and held for naught. The only tribunal known to our laws, for this purpose, is a jury. If a jury have not the right to judge between the government and those who disobey its laws, and resist its oppressions, the government is absolute, and the people, *legally speaking*, are slaves. Like many other slaves they may have sufficient courage and strength to keep their masters somewhat in check; but they are nevertheless *known to the law* only as slaves.

That this right of resistance was recognized as a **common law right**, when the ancient and genuine trial by jury was in force, is not only proved by the nature of the trial itself, but is acknowledged by history.

This right of resistance is recognized by the constitution of the United States, as a strictly legal and constitutional right. It is so recognized, first by the provision that "the trial of all crimes, except in cases of impeachment, shall be by jury"--that is, by the country--and not by the government; secondly, by the provision that "the right of the people to keep and bear arms shall not be infringed." This constitutional security for "the right to keep and bear arms," implies the right to use them--as much as a constitutional security for the right to

buy and keep food would have implied the right to eat it. The constitution, therefore, takes it for granted that the people will judge of the conduct of the government, and that, as they have the right, they will also have the sense, to use arms, whenever the necessity of the case justifies it. And it is a sufficient and *legal* defense for a person accused of using arms against the government, if he can show, to the satisfaction of a jury, *or even any one of a jury*, that the law he resisted was an unjust one.

In the American State constitutions also, this right of resistance to the oppressions of the government is recognized, in various ways, as a natural, legal, and constitutional right. In the first place, it is so recognized by provisions establishing the trial by jury; thus requiring that accused persons shall be tried by "the country," instead of the government. In the second place, it is recognized by many of them, as, for example, those of Massachusetts, Maine, Vermont, Connecticut, Pennsylvania, Ohio, Indiana, Michigan, Kentucky, Tennessee, Arkansas, Mississippi, Alabama, and Florida, by provisions, in their bills of rights, declaring that men have a natural, inherent, and inalienable right of "*defending* their lives and liberties." This, of course, means that they have a right to defend them against any injustice *on the part of government*, and not merely on the part of private individuals; because the object of all bills of rights is to assert the rights of individuals and the people, *as against the government*, and not as against private persons. It would be a matter of ridiculous supererogation to assert, in a constitution of government, the natural right of men to defend their lives and liberties against private trespassers.

Many of these bills of rights also assert the natural right of all men to protect their property--that is, to protect it *against the government*. It would be unnecessary and silly indeed to assert, in a constitution of government, the natural right of individuals to protect their property against thieves and robbers.

The constitutions of New Hampshire and Tennessee also declare that "the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind."

The legal effect of these constitutional recognitions of the right of individuals to defend their property, liberties, and lives, against the government, is to legalize resistance to all injustice and oppression, of every name and nature whatsoever, on the part of the government.

But for this right of resistance, on the part of the people, all governments would become tyrannical to a degree of which few people are aware. Constitutions are utterly worthless to restrain the tyranny of governments, unless it be understood that the people will, by force, compel the government to keep within the constitutional limits. **Practically speaking, no government knows any limits to its power, except the endurance of the people.** But that the people are stronger than the government, and will resist in extreme cases, our governments would be little or nothing else than organized systems of plunder and oppression. All, or nearly all, the advantage there is in fixing any constitutional limits to the power of a government, is simply to give notice to the government of the point at which it will meet with resistance. If the people are then as good as their word, they may keep the government within the bounds they have set for it; otherwise it will disregard them--as is proved by the example of all our American governments, in which the constitutions have all become obsolete, at the moment of their adoption, for nearly or quite all purposes except the appointment of officers, who at once become practically absolute, except so far as they are restrained by the fear of popular resistance.

The bounds set to the power of the government, by the trial by jury, as will hereafter be shown, are these--that the government shall never touch the property, person, or natural or civil rights of an individual, against his consent, (except for the purpose of bringing them before a jury for trial,) unless in pursuance and execution of a judgment, or decree, rendered by a jury in each individual case, upon such evidence, and such law, as are satisfactory to their own understandings and consciences, irrespective of all legislation of the government.



"In American legal theory, jury power was enormous, and subject to few controls. There was a maxim of law, the jury was judge both of law and of fact in criminal cases. This idea was particularly strong in the first revolutionary generation, when memories of royal justice were fresh. In some states the rule lasted a long time, and in Maryland, the slogan was actually imbedded in the constitution. But the rule came under savage attack from some judges and other authorities...it...threatens power of judges".

Lawrence M. Friedman, A History of American Law (1973) P.251